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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/928,785

08/13/2001

Mark Thomas Cammarota

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23556 7590 07/12/2007
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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

07/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/928,785
Filing Date: August 13, 2001
Appellant(s): CAMMAROTA ET AL.

MAILED

JUL 12 2007

Group 3700

Thomas M. Gage
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 23 February 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-4, 6, 7, 13, 15, 18, and 24; and 8, 11, 16, 17, 30, and 31 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 5, 9, 10, 12, 19, and 38 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

D 313,067	Harju	12-1990
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(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 6-8, 11, 13, 15-18, 24, and 30-31 are rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on 28 September 2004.

Claims 5, 9, 10, 12, 14, 19, and 38 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 28 September 2004.

(11) *Response to Argument*

Ground 1 – Claims 1-4, 6, 7, 13, 15, 18, and 24

In response to the Appellant's argument that the graphics of Harju fail to fulfill the definition of "permanent character graphic" set forth in the instant specification, it is noted that the Examiner has given the limitation "permanent character graphic" the broadest reasonable interpretation when examining the claims. The graphics of Harju depicting animals fulfill the common definition of each word of the phrase "permanent character graphic;" i.e. the graphics of Harju are non-fading, depict symbols, and are visible graphics printed on the diaper.

Further, in making the argument that only behaviors that are decidedly “non-dog-like” such as driving an automobile, the Appellant further limits the scope of the claim beyond even what is described in the specification. Although sitting is a decidedly “dog-like” behavior, it is also a behavior common to humans, and therefore a graphic depicting a dog sitting fulfills the definition in the specification of a “permanent character graphic” by showing a dog engaged in a typical human behavior. Therefore, even when the definition of “permanent character graphic” set forth in the specification is fully considered, the sitting dog graphic shown by Harju in Figures 1 and 3 fulfills the limitation of the claim.

Ground 1 – Claim 8

In response to the Appellant's argument that Harju fails to disclose a visual segmentation element that at least partially surrounds the permanent character graphic, it is noted that Harju shows in Figure 3 shows multiple arrows extending from the active object graphic, the stoplight, which border the permanent character graphics, the animals, on at least one side. The arrows provide visually distinguishable features that separate the article into at least two zones, one above the arrow and one below. The arrows border the permanent character graphics on at least one side of the graphics, and therefore partially surround them. Therefore, Harju clearly shows in Figure 3 a visual segmentation element which fulfills the definition set forth in the instant specification and the limitations of the instant claim.

Ground 1 – Claim 11

In response to the Appellant's argument that Harju fails to disclose a visual segmentation element that also at least partially surrounds the active object graphic, is noted that Harju shows in Figure 3 the segmentation elements, the arrows, bordering at least part of the active object graphic, the stoplight.

Ground 1 – Claim 16

In response to the Appellant's argument that Harju fails to disclose a background color graphic, it is noted that white is a color, and the solid white backsheet of Harju is shown in Figure 3 as surrounding the graphics and occupying the spaces therebetween. Therefore, Harju clearly shows in Figure 3 a background color graphic which fulfills the definition set forth in the instant specification and the limitations of the instant claim.

Ground 1 – Claim 17

In response to the Appellant's argument that Harju fails to disclose a visual segmentation element, please see Ground 1 – Claim 8 above.

Ground 1 – Claim 30

In response to the Appellant's argument that Harju fails to disclose the active object graphic is disposed in the crotch region, Harju shows in Figure 3 the active object graphic, the stoplight, extending beyond the gathers depicting the leg openings, and therefore extending into and is at least partially disposed in, the crotch region of the diaper.

Ground 1 – Claim 31

In response to the Appellant's argument that Harju fails to disclose the active object graphic is longitudinally disposed between the permanent character graphic and the transverse center line, it is noted that the active object graphic, the stoplight, is shown in Figure 3 as being located at one end of the article while the at least one permanent character graphic is located at the other. The active object graphic and permanent character graphic are therefore located on opposite sides of the transverse center line which divides the diaper in half laterally.

Ground 2 – Claims 5 and 38

In response to the Appellant's argument that activity or action of the permanent character graphic is a beneficial aspect of the toilet training process, it is noted that page 11, lines 5-13, of the instant specification merely define the relationship between the permanent character and object graphics. The involvement between the permanent character graphic and permanent object graphic does not enhance the performance or function of the diaper in any substantive way. The involvement between the permanent character and object graphics does not set the instant invention apart from the prior art invention as patentably distinct.

Ground 2 – Claims 9 and 12

In response to the Appellant's argument that the segmentation graphic completely surrounding the character graphic is non-obvious, it is noted that the instant specification fails to adequately describe the benefits gained from completely surrounding the character graphic from the segmentation graphic. The instant

specification describes on page 13, lines 7-21, the purpose of providing a visual distinction between the permanent character graphic and the graphic which changes after wetting of the diaper. However, no distinction is described between a segmentation graphic which partially surrounds the character graphic, as does the segmentation graphic disclosed by Harju, and a segmentation graphic which completely surrounds the character graphic. The extension of the segmentation graphic to fully surround the character graphic does not offer a patentable distinction over a segmentation graphic which partially surrounds the character graphic.

Ground 2 – Claim 10

In response to the Appellant's argument that interactively interrelating the permanent object and character graphics is non-obvious, it is noted that the instant specification fails to adequately describe the benefits gained from the interrelationship between the permanent object and character graphics. This feature does not improve the function of the diaper or provide a patentable distinction between the instant invention and the prior art invention.

Ground 2 – Claim 19

In response to the Appellant's argument that a 'defined floor graphic' is non-obvious, it is noted that page 14, lines 1-12 of the instant specification merely define a floor graphic. The instant specification remains silent as to how the inclusion of a floor graphic functions to disassociate the character graphic from the change in the active graphic after wetting of the diaper. The Appellant offers no quantitative or qualitative proof that the addition of a graphic depicting a patch of grass beneath the character

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graphic would improve the performance of the diaper. The addition of a floor graphic does not set the instant invention apart from the prior art invention as patentably distinct.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

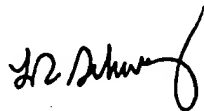


C. Lynne Anderson

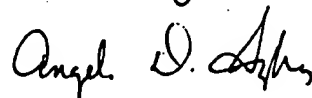
June 21, 2005

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